



**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Peter J. DeVries, et al.

Assignee: ABBOTT LABORATORIES

Serial No.: 10/684,109

Filed: October 10, 2003

For: ERYTHROPOIETIN RECEPTOR  
BINDING ANTIBODIES

Attorney Docket No.: 6989.US.02

Date: December 19, 2003

EXPRESS MAIL NO.: EV314259969US

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*Kimberly A. Iorio*  
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LICENSING & REVIEW

**PETITION FOR RETROACTIVE LICENSE UNDER 37 C.F.R. §5.25**

Attention Licensing and Review  
Commissioner of Patent and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants hereby petition for a retroactive license under 35 U.S.C. §184 in accordance with 37 C.F.R. §§5.14 and 5.25. The \$130.00 fee required by 37 C.F.R. §1.17(h) accompanies this petition. The following statement explains why a retroactive license is necessary and should be granted.

A foreign filing license was previously granted for the subject matter found in U.S. Serial No. 10/269,711. Applicants added information to this U.S. application to create a new continuation-in-part application both for filing with the U.S. Patent and Trademark Office and for foreign filing. The continuation-in-part application entitled, "ERYTHROPOIETIN RECEPTOR BINDING ANTIBODIES" was filed with the U.S. Patent and Trademark Office on October 10, 2003 and received U.S. Serial No. 10/684,109. U.S. Serial No. 10/684,109 is attached herein as Exhibit A. The new text in U.S. Serial No. 10/684,109 (i.e. text that is different from that of the parent application) has been marked with underlining.

01/09/2004 SDENBOB1 00000051 010025 10684109  
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U.S. Serial No. 10/684,109 was filed abroad in the following countries on the dates shown below (37 C.F.R. §5.25(a)(1)):

Argentina	October 14, 2003
Chile	October 13, 2003
Malaysia	October 14, 2003
Peru	October 13, 2003
Taiwan	October 13, 2003
Thailand	October 10, 2003
Uruguay	October 14, 2003
Venezuela	October 13, 2003

Confirmation letters showing that the applications were filed in these countries and the dates on which filing occurred are attached herein as Exhibit B and Exhibit C. (37 C.F.R. §5.25(a)(2)).

Additionally, a PCT Application was filed in the U.S. Receiving Office on October 14, 2003 and received International Application No. PCT/US03/32243.

At the time U.S. Serial No. 10/684,109 was filed abroad it was not under a secrecy order, and it is not currently under a secrecy order. The parent application, U.S. Serial No. 10/269,711 also was not under a secrecy order, and it is not currently under a secrecy order. (37 C.F.R. §5.25(a)(3)(i)).

Review of the new subject matter in U.S. Serial No. 10/684,109 shows it is consistent with the information found in its parent, U.S. Serial No. 10/269,711, for which a foreign filing license was granted on December 12, 2002. This new text merely supplements and expands on the subject matter which was disclosed in the parent application. Further, the newly added subject matter does not change the general nature of the invention in a manner that would require the United States application to have been made available for inspection under §181.

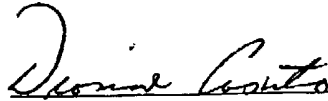
The attached Declaration pursuant to 37 C.F.R. §5.25 demonstrates that a foreign filing license had been diligently sought prior to the filing of the proscribed foreign filing. (37 C.F.R. §5.25(a)(3)(ii)). The Declaration also explains why the material was filed abroad through error and without deceptive intent before the required license under §§5.11 and 5.14 had been obtained. (37 C.F.R. §5.25(a)(3)(iii)).

In view of the foregoing statements, the attachments demonstrating foreign filing, the subject matter foreign filed, and the explanations provided in the attached Declaration, Applicants respectfully request that a retroactive foreign filing license be granted.

Should the Examiner have any concerns regarding the above, he or she is respectfully requested to contact the undersigned at the telephone number listed below.

ABBOTT LABORATORIES  
Customer No.: 23492  
Telephone: (847) 938-3137  
Facsimile: (847) 938-2623

Respectfully submitted,  
Peter J. DeVries, et al.

A handwritten signature in cursive script, appearing to read "Dianne Casuto", is written over a horizontal line.

Dianne Casuto  
Registration No. 40,943  
Attorney for Applicants